



Montana Petroleum Marketers and Convenience Store Association's Position on EPA Proposed Revisions to Underground Storage Tank Regulations

Ronna Alexander, MPMCSA Executive Director

Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Montana Department of Environmental Quality.

The long awaited final ruling on the EPA's proposed revisions to the underground storage tank regulations may finally be imminent. We expect the Office of Management and Budget (OMB) to release the final rule any day. The OMB is part of the Executive Office of the President and reviews all proposed federal rules before they are made final.

For some background, the Montana Petroleum Marketers and Convenience Store Association is affiliated with a national organization, the Petroleum Marketers Association of America, that has been integrally involved in assessing and ultimately opposing certain sections of the EPA's proposed new requirements for underground storage tank (UST) systems. The Petroleum Marketers Association of America (PMAA) is a federation of 48 state and regional trade associations representing more than 8000 petroleum marketers nationwide.

In 2011, PMAA formed a UST Task Force made up of petroleum marketers and professional engineers to assess the costs of the proposed new inspection and monitoring requirements, and draft a less costly alternative proposal. The PMAA Task force has met on multiple occasions with the EPA to discuss its opposition to the rule. These meetings:

- Won the support of the U.S. Small Business Administration (SBA) in the fight against the EPA's inaccurate small business impact analysis,
- Launched a successful grass roots campaign in Congress to pressure the EPA to delay the rule in order to reconsider the cost burdens it would impose, and
- Offered an alternative proposal that would achieve the same environmental protection at a fraction of the cost.

These efforts by PMAA together forced the EPA to reconsider and redraft the rule.

PMAA believes that the proposed rule to amend federal UST regulations is seriously flawed. First, the EPA's Regulatory Impact Analysis (RIA) significantly underestimated compliance costs imposed by the Notice of Proposed Rulemaking (NPRM). In the RIA, the EPA estimated that annualized compliance costs imposed by the NPRM for small business marketers would amount to \$900. Based on input received from UST equipment and service vendors, PMAA calculated annualized compliance costs imposed by the NPRM to be \$6,100. These costs increase significantly when the expense associated with the storage, handling and disposal of potentially contaminated water used to conduct mandatory integrity testing for spill buckets is added. Depending on the number of spill buckets at an UST site, this one requirement alone could add \$4,000 per year to the \$6,100 in annualized compliance costs imposed by the NPRM.

Second, PMAA was not convinced that the EPA conducted the extensive outreach to stakeholders that the agency claimed in the preamble to have made, prior to the publication of the NPRM. While the EPA worked closely with PMAA on a number of the regulatory mandates required by the Energy Act of 2005, including operator training requirements, the agency did not engage in the same vigorous outreach to the regulated community with regard to the onerous release protection and prevention provisions contained in the NPRM. By failing to fully engage small business petroleum marketers in the regulatory process, the EPA missed out on valuable input from stakeholders that would have resulted in a more cost effective and realistic regulatory proposal.

While PMAA did not object to every proposed requirement, we will briefly summarize the specific objections that if retained in the final rule may affect how owner/operators do business in Montana in the future.

1. Alternative Fuel Compatibility: PMAA has major concerns about the alternative fuel compatibility provisions in the proposed rule and does not believe that any of the options put forward in the rule will overcome marketer resistance to supply mid-level alternative fuel blends without liability protection. There is nothing in the proposed rule that would offer such liability protection.

2. Interstitial Monitoring-Reporting of Suspected Releases: The EPA is proposing to require immediate reporting of an interstitial monitoring alarm as a suspected release. PMAA strongly opposes this section as it believes the sounding of an interstitial alarm is not always the result of a release as sensors can give false alarms. Change in temperature can cause brine levels, resulting in an alarm. Water intrusion and faulty wiring can also cause alarms. While Montana rules require reporting of a suspected release from a monitoring alarm, there is a variance clause that allows the owner/operator 24 hours to investigate the cause, correct the condition, and document that a release has not occurred. This is what PMAA is recommending in the objection; that owner/operators be required to report any interstitial alarms that have been investigated and confirmed to be a release from a sump.

3. Under-Dispenser Containment: The EPA is proposing that owners and operators install under dispenser containment beneath new dispensers; "new" meaning when both the dispenser and the *equipment* needed to connect it to the UST system are installed at a

UST facility. The proposed rule lists replacement of check valves, shear valves, unburied risers or flexible connectors as constituting a "new" dispenser system. Montana rule currently requires that UDC containment be installed when a new UST system is installed; dispensers and any associated hardware used to attached the dispenser to the product piping is replaced; product piping is repaired or replaced; or significant modifications are made to the concrete at a dispenser island. The EPAs proposal would *trigger* UDC for any and all upgrades to the equipment. PMAA argues that the *trigger* for UDC should be the replacement of ALL equipment in the vertical footprint of the dispenser, down as far as the horizontal supply line. The provision, as proposed, creates a powerful disincentive to upgrade older UST equipment.

4. Walkthrough Inspections: The EPA is proposing that owners and operators perform walkthrough inspections of their UST systems once every 30-days. Inspections of the following equipment would be required: spill prevention equipment, sumps and dispenser cabinets, monitoring and observation wells, cathodic protection systems, and release detection equipment. The EPA is also proposing that owners and operators compile and keep inspection records for one year. PMAA opposes the 30-day walkthrough inspection unless the manufacturer specifically requires such inspection for the warranty and, best maintenance/operational practices for the equipment as specified in the operation manual. Further, a 30-day frequency is excessive; six months would be acceptable.

6. Spill Prevention Equipment Tests: The EPA is proposing owners and operators test spill prevention equipment, catchment basins, spill buckets upon installation and, at least once every twelve months thereafter. PMAA opposes the proposed testing requirements. The industry believes it is unnecessary to conduct integrity testing on secondary containment sumps. Visual inspection alone is sufficient to ensure that spill buckets are free of cracks, holes, debris and water. If the sump area is dry and clean upon visual inspection, then integrity of the containment area is assured.

7. Overfill Prevention Equipment Tests: The EPA is proposing that owners and operators test for proper operation of overfill prevention equipment, including automatic shut-off valves, flow restrictors and high level alarms at installation, and once every three years. PMAA supports the testing of overfill prevention equipment at installation but opposes the EPA's proposed three-year testing requirement. First, most manufacturers do not provide recommendations for testing overfill prevention equipment. Nor are there industry standards or codes of practices currently available that address testing procedures for overfill prevention equipment. The EPA has recognized this deficiency in the preamble by stating that the agency "anticipates" that manufacturers and standard setting organizations will develop testing procedures in response to the final rule. PMAA contends that the regulatory costs associated with overfull prevention equipment testing cannot be accurately determined for a testing procedure that does not exist.

In November 2014, PMAA Task Force members met with the Office of Management and Budget to express its concerns over the UST rule that is both procedurally flawed and imposes unacceptable compliance costs. The OMB is not allowed to comment on rules under review but they asked a number of questions regarding compliance costs.

PMAA does not know which provisions made it to the final rule currently under review at the OMB, but it likely contains some of the cost saving alternative measures PMAA recommended. We hope to have clarification soon on what the final requirements will be; perhaps by the next publication of the MUST News!

From the industry's perspective, if the agency fails to reduce the compliance requirements in the final rule, PMAA will explore additional means to fight the rule, including legal action or defunding implementation. I thank the Montana DEQ and the Permitting and Compliance Division for allowing us to express the "industry perspective".